

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MILES MILLER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

ORDER

10-cv-569-bbc

Heather Freeman, counsel for plaintiff Miles Miller, has moved for authorization of an award of attorney fees for her work in representing plaintiff in this social security proceeding. Plaintiff sought review of his claim for social security benefits in court after receiving an adverse ruling from the Acting Commissioner of Social Security. This court remanded his claim to the agency for further proceedings, as a result of which he was awarded \$123,120.00 in past due benefits.

Counsel is asking for an award of attorney fees in the amount of \$46,554.00 for the work she did in this court, which amounted to 35.15 hours. This represents 25% of plaintiff's award of \$123,120.00 and 25% of the awards of \$31,548.00 made to each of plaintiff's two children. Defendant withheld \$30,780.00 for payment of attorney fees, or 25%, from plaintiff's award but failed to withhold any amount from the children's awards. (It represents that it will initiate overpayments proceedings if counsel's fee is approved.)

Twenty-five percent of each child's payment would be \$7,887.00; multiplied by two, the amount would be \$15,774.00.

Earlier in these proceedings, plaintiff was awarded \$5,600.00 under the Equal Access to Justice Act, which he paid to counsel. If counsel's request for fees is granted, she will refund the \$5,600 to her client.

Defendant does not oppose counsel's request, but asks the court to evaluate it under 42 U.S.C. § 406 to be sure that granting the amount sought yields a reasonable amount in this case. Defendant points out that counsel billed a total of 35.15 hours, which means that an award of the full fee that counsel has requested would compensate her at an hourly rate of \$1,324.44. Given the good results that counsel obtained for her client, her client's willingness to enter into a contingency fee arrangement and the number of cases in which counsel receives no fees at all for representing social security claimants, a fee award of \$30,780.00 does not seem unreasonable for the work in this case on behalf of plaintiff. It is a different question whether counsel is entitled to 25% of the awards to plaintiff's children. She has not suggested that the awards to the children were the result of any effort she would not have had to make on plaintiff's behalf. I believe that a fee is proper for the good results achieved by the children, but not a fee of 25%. Instead, I will approve a fee of 10% to be paid from each child's award, or \$3154.80 for a total of \$6309.60. The final fee award will be \$37,089.60, which works out to an hourly fee of \$1055.18. Large as this hourly fee is, I believe that it is warranted.

By their nature, contingent-fee agreements will at times produce far higher rates for

counsel than an hourly rate arrangement. If they did not, lawyers would have no reason to enter into them, since many of their agreements fail to produce any payment at all. Nothing in the record suggests that plaintiff did not enter willingly into this agreement with counsel. The return is high but not unreasonable, when balanced against the probability of success, and it is in line with fees awarded to plaintiff's counsel in other cases. Plt.'s Pet., dkt. #24, at 5-6.

ORDER

IT IS ORDERED that the motion for authorization of an attorney fee award filed by Heather Freeman, counsel for plaintiff Miles Miller, is GRANTED. Counsel is due attorney fees in the amount of \$37,089.60, of which \$5,600 is to be refunded by counsel to plaintiff to reimburse him for the \$5,600 in fees awarded to him under the Equal Access to Justice Act that he remitted to counsel.

Entered this 9th day of September, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge